

## THIRD DIVISION

[ G.R. No. 137750, January 25, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DINDO ABSALON AND JOEL DIJON, ACCUSED-APPELLANTS.**

### DECISION

**GONZAGA-REYES, J.:**

Before this Court is the appeal of accused-appellants Dindo Absalon and Joel Dijon seeking the reversal of the decision<sup>[1]</sup> of the Regional Trial Court, Branch 13, Carigara, Leyte in Criminal Case No. 2611 finding them guilty of the crime of murder.

Accused-appellants Dindo Absalon and Joel Dijon together with Robert Inzo, Joseph Dijon and Eddie Quilisadio were charged with murder under the following Information<sup>[2]</sup>-

"That on or about the 5<sup>th</sup> day of October 1996, in the Municipality of Leyte, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, and assault and shot one ROMULO ACEBEDO with firearms (M14 and M16 rifles) which the accused have provided themselves for the purpose, thereby inflicting upon the latter the following wounds, to wit:

1. Gunshot wound over right face, measuring 1 cm. in diameter, lacerated, inverted, with contusion collar; connected to a wound on the left side of the head, measuring 4 inches in diameter, lacerated everted, with the skull fractured and the brain exposed and blown out.
2. Gunshot wound, left angle of the mouth, lacerated, inverted, with contusion collar; connected to a wound on the vertex of the head posterior, measuring 1-1/2 inch in diameter, lacerated, everted, and with the skull fractured and brain exposed.
3. Powder burns found over the lower face more on the or around the left side of the mouth.

which wounds caused the death of said Romulo Acebedo.

CONTRARY TO LAW."

Upon arraignment on January 27, 1997, all the accused duly assisted by counsel, except Eddie Quilisadio who remained at large, pleaded not guilty to the crime charged.<sup>[3]</sup>

The following facts are supported by the evidence:

At about 7 o'clock in the morning of October 5, 1996, Barangay captain Romulo Acebedo of Mataluto, Leyte, Leyte, and his wife, Ruperta Ranis Acebedo were on their way to the house of a certain Lily Catari located in the Barangay proper of the same Barangay to settle a family problem.<sup>[4]</sup> While on their way and upon reaching the cemetery, three (3) gunshots rang out,<sup>[5]</sup> and Romulo Acebedo was shot and fell to the ground<sup>[6]</sup> Appellant Dindo Absalon approached them and shot Romulo at the mouth with a long firearm<sup>[7]</sup>. Ruperta Acebedo cradled her fallen husband, holding his head and saw blood oozing therefrom<sup>[8]</sup>. She then saw appellant Joel Dijon, who was unarmed, approach appellant Dindo Absalon<sup>[9]</sup> and saw another person whom she cannot identify<sup>[10]</sup> Thereafter, Ruperta ran towards the direction of their house<sup>[11]</sup> In the autopsy examination conducted by Dr. Leticia Gatchalian, it was reported that the victim Romulo Acebedo sustained two gunshot wounds and the cause of death was severe hemorrhage secondary to gunshot wounds.<sup>[12]</sup>

After trial on the merits, the lower court rendered its decision dated August 24, 1998,<sup>[13]</sup> the dispositive portion reads:<sup>[14]</sup>

"WHEREFORE, IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered finding accused JOEL DIJON and DINDO ABSALON GUILTY of the crime of Murder and is (sic) hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to indemnify the heirs of the victim, Romulo Acebedo, the sum of P100,000.00 without, however, subsidiary imprisonment in case of insolvency, and further, the Court finds accused JOSEPH DIJON NOT GUILTY and orders the DISMISSAL of the case against him. The bail he posted may now be released and without any further legal effect.

SO ORDERED."

In holding accused Dindo Absalon and Joel Dijon liable, the trial court gave credence to the testimony of prosecution witness Ruperta Acebedo, wife of the deceased victim, who positively identified the accused, and rejected the defense of alibi invoked by the appellants. It concluded that Ruperta cannot be mistaken as to the identity of the accused Dindo Absalon and Joel Dijon because Joel was a neighbor of the Acebedos at Barangay Mataluto while Dindo was positively identified when he shot Romulo at close range; that the inconsistencies in the testimony of Ruperta referred only to minor details which strengthened her credibility as it meant that she was speaking the truth. The Court however, acquitted Joseph Dijon on the ground that the only evidence connecting Joseph to the commission of the crime charged was the doubtful testimony of Ismael Diola; hence his participation based on conspiracy was not proven. Accused Roberto Inso figured in an incident and was shot to death on July 13, 1998; thus the case against him was dismissed.

The instant appeal filed by accused-appellants Dindo Absalon and Joel Dijon allege that the lower court erred:[15]

- "I. IN CONVICTING THE HEREIN ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED-APPELLANTS;
- II. IN CONVICTING THE ACCUSED-APPELLANTS DESPITE A STRONG DEFENSE OF ALIBI AND TOTAL DENIAL, AND IN BELIEVING THAT SAID DEFENSE IS A SHAKY FOUNDATION AND APPEARS DOUBTFUL IF NOT A TOTAL FALSEHOOD;
- III. IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE FACT THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE TAINTED WITH MATERIAL INCONSISTENCIES AND INCREDIBLE AND WERE HEARSAY; AND,
- IV. IN NOT APPRECIATING THE FACT THAT THE PROSECUTION WITNESSES WERE INFLUENCED BY THE POLICE OFFICERS IN IMPUTING THE CRIME TO THE HEREIN ACCUSED-APPELLANTS."

The central issue in this appeal focuses on the credibility of the prosecution witnesses particularly of Ruperta Ranis vda de Acebedo, wife of the victim Romulo Acebedo, in identifying her husband's assailants.

Appellants contend that the trial court erred in concluding that they were positively identified by Ruperta Acebedo whose testimony was inconsistent and incredible, citing the following: (1) that when Trinidad Golane (balae of the spouses Acebedos) and a certain Barangay Councilman reported the killing incident to the police authorities, they said that the deceased victim Romulo Acebedo was shot by unidentified men, thus appellants insinuate that had Ruperta Acebedo really known the assailants, she would have told the former the names of the assailants; (2) that when Ruperta Acebedo was being interviewed by the police officers, she never mentioned the names of her husband's assailants; (3) that there were inconsistencies between Ruperta's affidavit and her testimony in the court especially with respect to the identity of the accused-appellants.

In his brief, the Solicitor General prays for the affirmance of appellant Dindo Absalon's conviction but seeks the acquittal of appellant Joel Dijon on the ground that conspiracy between appellants was not proven, arguing that Joel Dijon's mere presence in the crime scene does not make him guilty.

The settled rule is that appellate courts will generally not disturb the findings of the trial court on the issue of credibility of witnesses considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial.[16] After an examination of the records, we affirm the trial court's finding that the prosecution witness Ruperta Acebedo has proven beyond reasonable doubt that accused-appellant Dindo Absalon was the one who shot her husband at close range. Her

testimony was clear and consistent that she saw appellant Dindo Absalon shoot her husband with a long firearm at a distance of about five armslength. Thus -<sup>[17]</sup>

Q: How did you proceed on that morning going to the barangay hall?

A: We walked to the barangay hall.

Q: While you were on your way can you tell this Court what transpired?

A: From our house when we reached the cemetery I heard a shot and also my husband heard a shot.

Q: How many shots were you able to hear?

A: I heard three shots and my husband told me that there was a smoke.

ATTY. SANTOS:

Q: After your husband said "nagpu-ot man" what happened next?

A: Because of the shot my husband turned back and I followed him then I heard the shot and when I look at him he fell down.

Q: Was your husband hit?

A: Yes, sir.

Q: How many wounds did your husband sustain?

A: Two (2).

Q: Where were these wounds located?

A: Witness pointing at her right cheek and it goes out at the top of the head and the second shot was at the mouth and it exited at the back of the head.

Q: And when this happened what did you do?

A: I cradle his body holding his head and I saw the blood oozing.

Q: Thereafter what happened?

A: Somebody counted one and two.

Q: Who was that somebody?

A: It was Joel Dijon and Dindo Absalon whom I saw and one whom I did not identify.

Q: You said there was a wound which came through from the mouth and exited from the top of the head. Did you come to know who made or who shot your husband this time?

ATTY. TUMAMAK:

We object Your Honor. This witness would be incompetent.

ATTY. SANTOS:

We will find it out Your Honor, if she can answer that.

COURT:

What is the question?

STENOGRAPHER READING BACK THE QUESTION:

Q: You said there was a wound which came through from the mouth and exited from the top of the head. Did you come to know who shot your husband this time?

COURT:

Let the witness answer.

ATTY. TUMAMAK:

We submit, Your Honor.

A: The wound that exited at the top of the head the one who shot it was Dindo Absalon.

ATTY. SANTOS:

Q: Will you point that person now if he is in Court?

A: Yes sir. (Witness pointing to a person inside of the courtroom who when asked of his name identified himself as Dindo Absalon.)

Q: Did you find out with what weapon did he use in shooting your husband?

A: Long firearm.

Q: How far was he to you when he fired on your husband?

ATTY. SANTOS:

Q: . . . which hit him from the mouth and exited through the head?

A: About five (5) armslength.

Q: Did you see him really fired that gun?

A: Yes sir.

Q: Can you demonstrate to the Court how he fired on your husband?

A: Witness at this juncture demonstrating a fortharm position.

Q: Then what did you do after this shot which was made by Dindo Absalon?

A: After my husband fell I ran.